IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1438 OF 2006.
IN
SECOND APPEAL NO. 538 OF 1992.

Mahadev Anna Mahadik
since deceased through heirs
1a) Suresh Mahaxev Mahadik & ors. ... Applicants.
Versus.
Kamaladevi w/o.Vithal Bichitkar & ors. ... Respondents.

Shri Killedar holding for Shri Nitin Jamdar for the Applicants.

Shri Dilip Bodake for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 28th November, 2007.

P.C.:

1. Not on board. Taken on board.

2. The Second Appeal is already on final hearing board. This Application is moved by the Applicants/ Appellants by pointing out that the partition proceedings have been finalised and on 22nd October 2007 notice has been issued to the Applicants that on 30th November 2007 the order of partition will be executed. The submission of the learned Advocate appearing for the Respondent No.2 is that on 31st January 2007 when this Civil Application was considered by the earlier Court relief of stay was not granted. He placed reliance on notice dated 1st February 2006 annexed to the affidavit-in-reply.

3. Firstly there is nothing on record to show that this Court has declined to grant ad-interim relief in favour of the Applicants. Secondly the notice dated 1st February 2006 annexed to the reply of the Respondents shows that on the date on which the Civil Application was placed before this Court, the partition proceedings were not finalised and notice dated 1st February 2006 was only a show cause notice as to why draft prepared should not be finalised. Now there is a notice issued on 22nd October 2007 of dispossession. Second Appeal is already on the board. Therefore, till disposal of the Second Appeal, it is directed that the decree for partition shall not be executed.

4. Civil Application is disposed of.

Judge.